



MONITORING OF THE IMPLEMENTATION OF COMMITTEE OF
MINISTERS' RECOMMENDATION CM/REC (2010)5 ON MEASURES
TO COMBAT DISCRIMINATION ON GROUNDS OF SEXUAL
ORIENTATION OR GENDER IDENTITY

REPORT ON THE REPUBLIC BULGARIA

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Background Information	1
Executive Summary	2
RECOMMENDATIONS	5
Purpose of the Report	10
Political System and Demographics	11
Methodology	11
1. Right to life, security and protection from violence	15
“Hate crimes” and other hate-motivated incidents	15
Hate speech	19
2. Freedom of association	19
3. Freedom of expression and peaceful assembly	20
4. Right to respect for private and family life	21
Right to respect for private and family life of same-sex families	21
Right to respect for private and family life of trans and intersex people	28
5. Employment	29
6. Education	31
7. Health	34
8. Housing	38
9. Sports	39
10. Right to seek asylum	40
11. National Human Rights Structures	42
12. Discrimination on multiple grounds	43

Background Information

In 2010 the Committee of Ministers of Council of Europe adopted the Recommendation on measures to combat discrimination based on sexual orientation and gender identity¹, recognizing that lesbian, gay, bisexual and transgender persons have been for centuries exposed and are still subjected to homophobia, transphobia and other forms of discrimination and social exclusion. This significant document aims to recall that human rights are universal and should guarantee the equal dignity of all human beings and the enjoyment of rights and freedoms of all individuals without discrimination on any ground, including sexual orientation, gender identity, gender expression and sex characteristics.

The Recommendation on measures to combat discrimination based on sexual orientation and gender identity lists measures that countries should adopt in order to combat discrimination on these bases. These measures are in accordance with the Convention for Protection of Human Rights and Fundamental Freedoms and its protocols, and Bulgaria (BG) is a signee of the Convention, therefore it is ought to apply these measures although the Recommendation itself does not have a binding force.

In Bulgaria, the first review process of the Recommendation CM/Rec(2010)5 takes place for a first time in 2018. In 2017 the LGBTI organizations in Bulgaria committed to conduct the follow up exercise of the Recommendation. Hence, this report on the monitoring of the implementation of the Recommendation CM/Rec(2010)5 aims to contribute to the broader European effort for the full implementation of the Recommendation in all Member States.

Executive Summary

Until 2018, Bulgarian government and institutions have never officially expressed a general position or support on LGBTI issues and the need for equal rights. The only legal act providing basic anti-discriminatory protection of LGBTI community in the country is the Anti-discrimination law. Although the domestic anti-discrimination legislation bans discrimination on sexual orientation grounds, as well as on any other ground, it makes no mention of the grounds of gender identity, gender expression or sexual characteristics.

¹ Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf40a

Therefore, anti-discrimination law is unspecific concerning transgender and intersex people and they are insufficiently protected under Bulgarian Anti-discrimination law.

There is no political, neither governmental will to combat discrimination based on sexual orientation and/or gender identity, therefore no real actions have been taken to this end. In recent years Bulgaria is facing a strong backlash against the rights and freedoms of women and LGBTI persons, which is initiated with the strong support of religious authorities and the governing parliamentary political parties. The LGBTI minority is not considered a target group or a factor in any social or political sphere. Thus, as of 2018, there are no governmental policies, measures or programs taken to monitor and diminish the inequality against the LGBTI community.

As a result of these gaps in the legislative framework and the lack of political will and engagement at a government and policy level, discrimination, hate speech and violence against LGBTI community is still widespread in Bulgarian society, preventing LGBTI people to fully access and enjoy their rights and freedoms as Bulgarian citizens.

The Penal Code still does not recognize hate crimes incited by sexual orientation or gender identity, thus the lack of implementation of hate crime provisions and the incorrect qualification of acts of hate crime as a misdemeanour by the police, prevents the initiation of criminal proceedings (principle *ne bis in idem*). This practice and LGBTI persons' distrust in the police conduct contribute to the already extremely high underreporting rate of hate crimes in Bulgaria.

Although hate speech has been a growing concern for all minority groups in Bulgaria, the Bulgarian government has provided no response in raising public awareness on the hate speech against LGBTI persons. Even worse, in 2017 and 2018 the tendency that we have observed for many years - to allow, approve, and even praise speech that incites hate or instigates violence against some of the most vulnerable groups in society continues, with the leader of the ultranationalist NFSB party, Valeri Simeonov, who is currently a deputy prime minister and chairman of the National Council for Cooperation on Ethnic and Integration Affairs, expressing openly anti-LGBTI and anti-Roma attitudes. Also, the judiciary practice has been inconsistent and inadequate, thus creating dangerous precedents as a result of the absence of application of existing criminal provisions, as well as the tolerance of hate speech, especially hate speech on social media, which is another increasing problem in the Bulgarian society.

Bulgaria is one of the few countries in the European Union left with no recognition of the families of LGBTI people. Not only the Constitution and the Family Code limits marriage as a union between a man and a woman, but the country legislation does not recognise the institution of civil partnership or cohabitation. This means that LGBTI families are left completely unrecognized by the law and therefore no rights and benefits arise from their relationships. Same-sex couples cannot inherit each other, no adoption rights are available, they cannot donate tissues or organs to each other because this is only available to married couples. It is as well questionable whether Bulgaria complies with the Directive 2004/38/EC as the Interior Ministry's Migration Directorate grants refusals to the family members of the EU citizens coming to reside in the country.

While discrimination on the grounds of sexual orientation in the field of employment is explicitly prohibited by the European and national laws, the national authorities have not implemented any measures to counteract the negative consequences of stigmatization, discrimination and exclusion of LGBTI persons from the Bulgarian labour market. As a result, LGBTI persons continue to hide their sexual orientation and gender identity from employers and colleagues in order to protect themselves from discrimination and harassment. Discriminatory practice against LGBTI people at workplaces exists, however very few legal cases have been initiated before courts.

School bullying of LGBTI students is widely present in Bulgarian schools and not sanctioned by the School staff. Research shows teachers' lack of knowledge, methodological tools, training, capacity and motivation to teach students on sexual orientation, gender identity, and gender expression or to tackle LGBTI-related school bullying. Furthermore, there is no health/sex education introduced in the Bulgarian education system. Therefore, schools remain unsafe and hostile environment for LGBTI students, but also for LGBTI teachers. The Bulgarian government completely failed to implement measures aimed at reducing homophobia, biphobia and transphobia through the education system so the basic knowledge and attitudes about LGBTI persons are primarily formed by media and political attitudes.

In the sphere of health care, the perception of homosexuality as a disease is still shared by many healthcare professionals in Bulgaria, although homosexuality is not classified as mental illness, according to the Medical Classification of Diseases. Currently, there are no targeted

trainings or suicide prevention programs which mention or address the specific needs and problems of LGBTI population in Bulgaria.

The stigma around sexual orientation and gender identity, gender expression and sex characteristics leads to refusal of health care services, particularly to transgender persons and persons living with HIV, or to people not discussing crucial health issues with their healthcare practitioners, and/or not being able to access health services in Bulgaria.

Although well-founded fear of persecution on the grounds of sexual orientation and/or gender identity constitutes a legitimate ground for claiming asylum in Bulgaria, it is difficult to estimate how these provisions are implemented in practice, as very few LGBTI asylum-seekers have been granted international protection in the country. Furthermore, the staff responsible for the processing of the asylum applications does not receive any LGBTI specific trainings.

Bulgarian LGBTI organizations work freely to promote the rights of LGBTI persons in the country and they rely mostly on EU-grants which significantly affects their work in terms of capacities for executing projects.

In general, different forms of violence and discrimination are still experienced on a daily basis by LGBTI persons in Bulgaria. Combating hate crimes and hate speech in particular remains a major challenge for LGBTI persons and this should be addressed as the top priority by the Bulgarian government along with the recognition of the families of same sex couples.

Regarding the operative text of the Recommendation CM/Rec(2010)5, it can be concluded that Bulgarian authorities did not show any commitment, neither made any effort in reviewing the national legislation or adopting positive measures to address discrimination on the grounds of sexual orientation, gender identity, gender expression or sex characteristics.

RECOMMENDATIONS

The Recommendation recognizes that LGBTI people are more likely to experience various forms of socioeconomic and cultural injustice, discrimination, harassment, and the threat of violence, due to their sexual orientation and gender identity, compared to those who identify themselves as heterosexuals and cisgender people.

In order to address this acute need for further protection, the Recommendation includes a number of measures aiming to overcome homophobia, transphobia and other forms of discrimination, violence, and social exclusion. Member states are ought to review existing legislation and collect relevant data to monitor the implementation of these measures, and to make sure that victims of discrimination and violence have access to effective legal remedies.

General

1. Recognize gender identity, gender expression and sex characteristics as grounds for prohibition of discrimination through amendments and supplements to the Anti-discrimination law.
2. Increase the number of measures that apply specifically to LGBTI persons in all national policies relating to the protection of human rights and gender equality
3. Include measures to national human rights and/or gender equality policies that would tackle discrimination on multiple grounds, especially the violence and social exclusion of LGBTI sex workers, LGBTI people of color, LGBTI-refugees, LGBTI-asylum seekers and people living under international protection, LGBTI persons with disabilities, LGBTI-ethnic minorities, including LGBTI-Roma people
4. For all national policies pertaining to human rights and gender equality, plan and develop relevant financial and action plans that contain clear and timeline indicators to measure the performance of the measures. Clearly determine the responsibility of the bodies for the implementation of national policy measures, together with sanctions for their non-implementation.
5. Strengthen cooperation between ministries, government offices and agencies with civil society organizations that have experience of working with LGBTI persons in planning and implementing national policy measures.
6. Oblige the Government of the Republic of Bulgaria to adopt, without delay and within a clearly defined period, national policies relating to human rights and gender/sex equality, in such a way that the adoption of the state budget depends on the adoption of such policies.
7. When adopting laws and other regulations, consistently use the correct terminology related to sexual orientation, gender identity, gender expression and intersex characteristics, as well as LGBTI persons in general, including official translations of all EU regulations into Bulgarian language, translations of international documents, as well as translation of Bulgarian documents into English. Such terminology should be

based on “Gender Equality Glossary According to the Standards of the European Union”

8. Take all necessary legislative measures to impose appropriate criminal penalties for violence, threats of violence, incitement to violence and related harassment, based on the actual or perceived sexual orientation or gender identity of any person or group of persons.
9. Ensure that perpetration of such violence is vigorously investigated, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished.
10. Undertake campaigns of awareness-raising, directed to the general public as well as to actual and potential perpetrators of violence, in order to combat the prejudices that underlie violence related to sexual orientation and gender identity

Hate crimes

1. Amendment to the Criminal Code of to include sexual orientation, gender identity, gender expression and sexual characteristics as grounds for incitement to hatred and violence.
2. Introducing in the Criminal Code of Bulgaria substantive hate crime offences and penalty-aggravating provisions on the basis of the SOGIESC.
3. Introduce mandatory trainings of judges, prosecutors, police officers and civil servants in order to inform them on discrimination, hate crimes and incitement to hatred and violence against LGBTI persons in order to
4. Develop a unique system for tracking hate crimes against LGBTI persons, which would represent a specific register to collect data on crimes which are motivated with hatred towards LGBTI persons.

Freedom of expression and peaceful assembly

1. Allocate public funding and official political support for Sofia Pride march.

Right to respect for private and family life

1. Adopt laws for recognition of same-sex families.
2. Adopt laws to ensure that lesbian couples have access to free reproductive treatment equal to straight couples and single women.
3. Pass and implement law on statutory procedure for legal gender recognition that is quick, transparent and accessible and based on self-determination.

4. Abolish provisions which condition legal gender recognition with invasive requirements, such as a mandatory psychiatric diagnosis, sterilisation, medical examinations, or hormonal treatment.
5. Pass and implement laws in all administrative units which would establish obligation of health insurance institutes to cover the costs of medical procedures of gender affirming procedures and define duties of medical institutions to form teams of trained professionals who could perform these procedures.
6. Engage medical institutions in cooperation and sharing relevant information with civil society, thus raising the awareness regarding intersex persons and removing outdated terms such as *hermaphrodite* and *pseudo hermaphrodite*.
7. Making information about intersex new-borns accessible
8. Prohibit medically unnecessary “sex normalising” surgeries on intersex children.

Employment

1. Include gender identity, gender expression and sexual characteristics as grounds for prohibition of discrimination in the Anti-discrimination law;
2. Amend the Labour Code to assure compliance with the Employment Equality Directive (2000/78/EC);
3. Carry out further research in the field of labour discrimination concerning LGBTI in Bulgaria;
4. An analysis of existing jurisprudence and implementation of existing legal provisions of equal treatment in employment and occupation;
5. Mandatory trainings for Bulgarian authorities, representatives of unions and associations of employers in order to raise awareness about problems LGBTI persons face in this field.

Education

1. Government agencies and Ministry of Education and Science must develop institutional measures to address and eliminate homophobic and transphobic bullying, violence and discrimination against LGBT students and teachers.
2. Development of nationwide teacher training programmes in order to raise awareness, to increase visibility, and to promote LGBTI tolerance and create an inclusive educational system.
3. Nationwide adoption of LGBTI-inclusive school curriculum, textbooks and resources that include positive representations of lesbian, gay, bisexual and trans (LGBT)

people, history, and related events. This should include teaching about lesbian, gay, bi and trans (LGBT) people and themes. Students need to be taught about the accomplishments of LGBT men, women and gender nonconforming people of the past and present, as well as the historical oppression that the LGBT community has faced for decades

4. Schools must develop internal plans and measures to ensure that the education methods, curricula and resources that are used respect diverse sexual orientations and gender identities, including the particular needs of students, their parents and family members related to these grounds
5. Introduce LGBTI inclusive modules in curricula and programmes in law schools and police academies, in the permanent and specialist programmes of police officers trainings, and civil service exams.
6. Trainings of teachers and university professors to sensitize them in working with LGBTI persons, to teach them what is hate speech against LGBTI people and how to avoid it.
7. Education institutions and schools should work with, psychologists/pedagogues and relevant specialist on providing adequate protection and psychological aid to victims and rehabilitation of perpetrators
8. Development of institutional measures for explicit protection of trans students in all educational institution. Trans students should be treated consistent with their gender identity in all aspects of planning, implementation, as well as in the operation and evaluation of single-sex classes

Health

1. Ministry of Health and relevant authorities should draw up and adopt an action plan to: raise awareness of LGBT specific health issues among policy-makers, the public and the LGBT community; to promote the health and wellbeing of LGBTI people and highlight the link between mental health, sexual health and issues of substance misuse; to ensure psychological support and consultations to LGBTI patients, including minors and people living with HIV, when needed.
2. Access to mental health services for LGBTI people should be improved, particularly for trans, intersex people, and people living with HIV. This requires nationwide professional trainings of health professionals to raise awareness of LGBTI people's health needs and specific problems and to promote cultural competence in healthcare settings

3. Medical literature should be updated particularly on trans and intersex health and healthcare workers need to be educated about sexual orientation, gender identities and sex characteristics in order to avoid misdiagnosis, inadequate treatment, refusal of health services or using offensive terms (i.e. saying homosexuality is a disease, etc.).
4. In view of the fact that hormone therapy is an essential part of gender reassignment, the authorities should provide financial assistance to those in need of such treatment.
5. Research is needed to determine the general health profile of trans and intersex people. LGB people should be also actively included in research about their health needs.
6. Professional training and sensitization of health care workers to ensure respect to patient's privacy and confidentiality, such as providing safe space where a patient will be able to have private consultation with a doctor.
7. Authorities to develop legislation, supportive policies and policy enforcement on gender recognition and gender reassignment ensuring that it is in line with international legal and health standards and expertise, which would ensure that trans adults can access medically necessary transition-related care and needed interventions

Housing

1. Ensure that discrimination in housing is prohibited in the Law of Obligations and Contracts in Bulgaria on the grounds of SOGIESC.
2. Ensure safe houses and shelters for LGBTI people and youth.
3. Trainings for social workers to recognize and meet the needs of LGBTI youth, especially of those who are victim of violence.

Asylum

1. Provide adequate general and specific training to all relevant categories of the asylum authorities' personnel, including interviewers and applicant reviewers in the State Agency for Refugees.
2. Remove all the countries which criminalize same-sex activities from the list of the "List of Safe Countries of Origin".
3. Carry out statistics on the approvals of international protection on the basis of which it is awarded, including sexual orientation and gender identity, accessible upon the request to the organizations working with refugees and asylum seekers

Purpose of the Report

This report serves to highlight the overall situation of LGBTQ persons in Bulgaria. It covers 12 areas: 1) Right to life, security and protection from violence; 2) Freedom of association; 3) Freedom of expression and peaceful assembly; 4) Right to respect for private and family life; 5) Employment; 6) Education; 7) Health; 8) Housing; 9) Sports; 10) Right to seek asylum; 11) National Human Rights Structures; 12) Discrimination on multiple grounds, with recommendations for improvement pertaining to each area.

Many areas of life mentioned in the Recommendations have not been addressed by any measure at all in Bulgaria. These include education, health, housing and sport.

Political System and Demographics

Bulgaria is a parliamentary democracy in which the most powerful executive position is that of the Prime Minister. The Bulgarian Parliament is unicameral and comprises the National Assembly (*Narodno Sabranie, Народно събрание*) which consists of 240 directly elected Deputies. The President of Bulgaria is also directly elected by the people.

Bulgaria is a unitary republican State. The constitution recognises the principle of local self-government (article 135-146). The Republic comprises three levels of governance: central, municipal and districts. The latest have purely statistical and administrative functions. The process of decentralisation started in 2003; since then, Municipalities have acquired administrative competences complemented by some financial autonomy in 2002.

Methodology

The monitoring of the implementation of the Recommendation on measures to combat discrimination based on sexual orientation and gender identity and the dissemination of the results in Bulgaria is a joint accomplishment of three non-governmental organizations. These are Bilitis Resource Center Foundation, responsible for information collection in the period May 1st – June 30, 2018; Deystvie LGBT Youth Association – responsible for preparation of the shadow report by July 31st, 2018; and GLAS Foundation, responsible for organizing a national-level information campaign disseminating the recommendations from the shadow

report. The methodology used for the monitoring was recommended by ILGA-Europe. The methodology comprised of the following steps:

Sending letters to governmental bodies to raise their awareness on the process and methodology of monitoring of the Recommendation and request their active participation – May 2018;

Organizing meetings with governmental bodies to provide additional details on the methodology of the monitoring – May/June 2018

Distribution of the Questionnaire, developed by the Council of Europe, in both English and Bulgarian language (unofficial translation), to enable public servants who are not fluent in English to review and complete the questionnaire – June 2018;

Collecting the filled in questionnaires and official responses by the governmental bodies and transferring all the information to LGBT Deystvie Youth Organization, to be used as the basis for developing of the shadow report – by June 30, 2018.

Preparation of the Shadow Report by Deystvie LGBT Youth by July 31st 2018;

Dissemination of the Shadow Report to the Council of Europe in the end of July (ILGA-Europe);

National-level dissemination of the Shadow Report and its Recommendations in September – October 2018, by means of an information campaign in social media and a special event, organized by GLAS Foundation.

Information Collection Process

Bilitis Resource Center Foundation sent out letters requesting meetings and disseminated the questionnaire of the monitoring to 14 relevant Bulgarian institutions:

- Ministry of Education and Science
- Ministry of Health
- Ministry of Labor and Social Policy
- Ministry of Defence
- Ministry of Interior
- Ministry of the Bulgarian Presidency of the EU council
- Ministry of Foreign Affairs
- Ministry of Youth and Sports

- Ministry of Justice
- Presidency of the Republic of Bulgaria
- National Assembly of Republic of Bulgaria
- National Ombudsman of Bulgaria
- State Agency for Child Protection
- Commission against Discrimination

However, the only institution, which sent back the filled in questionnaire, was the Commission against Discrimination (CAD).

Meetings were organized with representatives of four institutions: Ministry of Foreign Affairs, Commission against Discrimination, the Commission on Religions and Human Rights of the National Assembly, and the Ministry of Health. Phone calls were accomplished with the Ministry of Youth and Sports, and with a representative of the Ombudsperson's office, Hysein Ismail.

The Commission against Discrimination, Ministry of Foreign Affairs and the Commission on Religions and Human Rights were familiar with the Recommendation, but not in detail. The Ministry of Health informed us that they had forwarded the letter to the National Center of Infectious and Parasitic Diseases, which is a clear sign, that they recognize LGBTI only in relation to STIs.

The meeting in the Ministry of Foreign Affairs was held with the public servants in their Human Rights Department, but the latter were not aware of the CoE Monitoring process. After the meeting, the Questionnaire was sent to them via e-mail and despite the several phone conversations was not received back.

The representatives of the institutions showed understanding of the importance of the Recommendation and recognized the need for legal changes in multiple areas addressed by the Recommendation. Some of the representatives were not aware of the current situation of LGBTI rights in Bulgaria, such as the lack of recognizing homophobic and transphobic crimes as hate crimes in Bulgarian legislation, the barriers in the access to healthcare services faced by trans and intersex people.

Some representatives of these institutions showed certain degree of bias during the conversations. For example, a Representative of the Commission on Religions and Human Rights suggested that it is possible that the violence against LGBTI students in school is provoked by the victims through their behavior by demonstrating their sexual orientation.

The comments related to TI people showed ignorance on the issue, as some representatives shared “traditionalistic” views.

Each institution that participated in the correspondence on the Recommendations review showed willingness for future collaboration with the LGBTI organizations in Bulgaria.

Refusals for meetings and participation in the research

Refusals for meeting and participation in the research were received from the following institutions:

Ministry of Interior: “The National Police Directorate from the Ministry of Interior doesn’t have enough staff resource to participate in your initiative” stated a letter by this institution.

The National Agency for Child Protection reacted chaotically, did not send back the filled questionnaire and Bilitis has confirmed information, that the letter “leaked” in a couple of online media, known with their anti-LGBTI and women’s rights publications, using fake news.

Lack of communication

The Ministry of Defense, the Ministry of Education and Science, the Presidency and the Ministry of Justice did not respond to our invitation and the questionnaire was send to them via e-mail. We received online confirmation that they have received it and forwarded it to appropriate directorates within the institutions.

Because of the weak response of the governmental institutions during the Data Collection Process, the general conclusions on the implementation of the measures by the Bulgarian authorities, to be found in this report, are based mainly on research and reports published by other sources. These are reports by the Bulgarian Helsinki Committee (BHC), Youth LGBT Organization “Deistvie”, and Amnesty International. The responses of the Commission for Protection against Discrimination are also taken into account in developing the report.

1. Right to life, security and protection from violence

“Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.”

“Hate crimes” and other hate-motivated incidents

Hate crimes under the Criminal Code – scope

Under the current Criminal Code, preaching or inciting to discrimination, violence or hatred, as well as the use of violence, damage of property and the formation, leading or participation in an organisation, group or crowd with the aim of committing these acts is qualified as a criminal act when it is committed based on race, nationality, ethnic belonging, religion or political convictions of the victims (Articles 162 and 163 of the Criminal Code).²

Hate crimes based on sexual orientation, gender identity and gender expression

The Constitution of the Republic of Bulgaria in its Art. 6³ proclaims equality before the law on the basis of characteristics of race, nationality, ethnicity, sex, origin, religion, education, beliefs, political affiliation, personal and social status and property status. Sexual orientation, gender identity and gender expression are absent from the text of the Constitution.

The Criminal Code does not contain any provisions describing an act as a crime and/or hate speech based on sexual orientation, gender identity, gender expression and/or the sexual characteristics of the person. There are also no provisions to characterize this motive as an aggravating circumstance.

Case law on SOGIESC hate crimes

The Bulgarian Prosecution repeatedly and successively refused even to launch pre-trial proceedings for public appeals for homophobic violence, and if pre-trial

² Criminal Code of the Republic of Bulgaria, available online at: <https://www.legislationline.org/documents/section/criminal-codes/country/39>

³ Constitution of the Republic of Bulgaria, available online at: <http://www.parliament.bg/en/const>

proceedings existed at all for such acts with that legal qualification, no such case ever reached the trial phase in court.⁴

According to Amnesty International's latest reports, LGBT people have been attacked, raped, and one man was even killed.⁵ According to report on SOGIESC hate crimes and incidents executed by Youth LGBT organization Deystvie there were 26 SOGIESC hate crimes and incident in 2017.⁶ In 2017 GLAS Foundation gathered information about 33 cases of SOGIESC hate crimes and incidents.⁷ Most of these crimes had not been investigated and had gone unpunished. In most cases there is even a lack of reporting because the victim is afraid that their testimony will not be taken seriously.⁸ The Amnesty's report states that delays in investigation and criminal proceedings have been documented in two of these cases, and it is found that the police and the prosecution have treated the victim indifferently. In many cases, delays are due to the lack of understanding how to treat hate crimes, as well as to deep-rooted prejudices against LGBT people.⁹ The lack in the legislation of an explicit provision characterizing an act as a crime and/or hate speech based on the sexual orientation, gender identity, gender expression and/or sexual characteristics of the person, as well as the lack of any provision to characterize the motive of such an act as an aggravating circumstance means that this type of crimes are rarely investigated or uncovered and therefore they lack prosecution and investigation. Although one of the most important things in the criminal proceedings is to establish the motive for the offense committed, the motive in the case of hate crimes based on sexual orientation, gender identity, gender expression and/or sexual characteristics remains uncovered.

In the rare cases when homophobic or transphobic to attacks were reported to the Police or criminal proceedings were instituted, the perpetrator was charged with bodily injury committed by hooliganism motives – Art. 131, para. 1, item 12 of the CC. Homophobic

⁴ Bulgarian Helsinki Committee Annual Report for 2017, available online at: http://www.bghelsinki.org/media/uploads/annual_reports/annual_bhc_report_2017_issn-2367-6930_en.pdf

⁵ Amnesty International, Because of Who I Am: Homophobia, Transphobia and Hate Crimes in Europe, available in the internet at: <https://www.amnesty.org/en/documents/eur01/014/2013/en/>.

⁶ Youth LGBT organization Deystvie, SOGIESC Report, D. Lyubenova, available at: <http://deystvie.org/files/Report%20eng%20-%20online%20.pdf>

⁷ GLAS Foundation, Anti-LGBTI hate crimes and incidents in 2017, available online at: <https://glasfoundation.bg/wp-content/uploads/2018/REPORT%20ON%20ANTI-LGBTI%20HATE%20CRIMES%20ver%2005.pdf>

⁸ Youth LGBT organization Deystvie, SOGIESC Report, D. Lyubenova, available at: <http://deystvie.org/files/Report%20eng%20-%20online%20.pdf>

⁹ Amnesty International, Because of Who I Am: Homophobia, Transphobia and Hate Crimes in Europe, available in the internet at: <https://www.amnesty.org/en/documents/eur01/014/2013/en/>.

motives of the crime have not been not taken into account.¹⁰¹¹ Art. 325 of the Criminal Code contained a definition of hooliganism and it is defined as a deed of committing indecent acts, grossly violating the public order and expressing open disrespect for society.

The Case of the Murder of Mihail Stoyanov

Mihail Stoyanov was a 25-year-old medical student murdered in 2008 in the park Borisova Garden, with many bruises and haemorrhages found on his body. He was kicked by his attackers until they broke his windpipe, which led to his death. In 2010, two young men were arrested as suspects for the murder. In their testimony to the police, the two men admitted that they had “cleared the park of gays” and systematically beat gay men in the park Borisova Garden, i.e. their behavior was not incidental. The same was confirmed by the testimony of the police officer questioned in the case, who stated that the corpse had been found in a place where random persons were meeting for sexual encounters in respect of which data of beatings and robberies occurred, i.e. the police knew well the place where the crime was committed as one where attacks and other types of crime related to the sexual orientation of the persons happened. The evidence in the case found that the defendants and witnesses had walked down the alley in the park to look for a person to “purge” the park from or “kick”, as they themselves called the ill-treatment of persons for whom they presumed had homosexual orientation.¹²

In the grounds of its decision, the Sofia Court of Appeals (SCA) concluded that the direct purpose of the defendants had been clearly established, namely – beating of any person whom they considered to be homosexual. The SCA concluded that *the attackers experienced a strong and gratuitous hatred towards the victim that was dictated by the lack of any intelligence and the totally wrong notion of the defendants for their own significance and superiority over those they consider to be different, i.t. the homosexual persons* that they attacked. It was this idea for significance and superiority of theirs that motivated them to press Mihail to the ground, which led to his killing.

With regard to the first defendant, the court concluded that “[t]he gratuitous cruelty shown by the defendant towards a person whom he not only did not know but also had never seen

¹⁰ Amnesty International, Changing Laws, Changing Minds: Challenging Homophobic and Transphobic Hate Crimes in Bulgaria, available in the internet at: <https://www.amnesty.org/en/documents/eur15/001/2012/en/>.

¹¹ Amnesty International, Because of Who I Am: Homophobia, Transphobia and Hate Crimes in Europe, available in the internet at: <https://www.amnesty.org/en/documents/eur01/014/2013/en/>.

¹² Decision No. 330/12.07.2017 on the appellate CCGN No. 84/2016 of the SCA

before, as well as the circumstances under which the crime was committed – in complicity, after a decision had been made for the physical abuse of anyone, as long as they meet the defendants’ notion of a homosexual, show an overwhelming degree of public danger of the defendants as perpetrators”. With regard to the second defendant, the court found the “commission of the deed as part of the undertaken and systematically implemented activity of beating persons considered homosexuals” an aggravating circumstance.¹³

“The appellate court believes that the defendants were not led by hooliganism motives. The actions of the defendants were carried out in a public place, but it cannot be admitted that it concerned an indecent act affecting the public interest. Apart from the fact that these actions were not committed in front of many people, they were directed exclusively against the victim’s personality. This concerned a brutal physical assault that led to serious and irreversible socially dangerous consequences, which was not an expression of open disrespect for society, but a disrespect for the bodily integrity of another person. **The actions of the defendants expressed their hatred towards homosexuals, i.e. they acted on homophobic motives** rather than hooliganism ones”. This said, The Sofia Court of Appeal concluded that it had no grounds for qualifying the deed as one under Art. 116, para. 1, item 11 of the Criminal Procedure Code and that Sofia City Court had rightly acquitted the defendants of the charges in this part and dismissed the private prosecutor’s request for implementing a law for an offense with a more serious punishment.¹⁴

With this conclusion, the Sofia Court of Appeal admitted for the first time that a homophobic “hate crime” has been committed, it recognized that the motive for the offense committed is namely the sexual orientation of the person, as well as the increased degree of public danger of the defendants, but could not apply a law for a criminal offense with a more serious punishment (although there are grounds for that) because such a law did not exist, nor existed in the Criminal Code an aggravated offense providing for a heavier punishment for crimes committed for homophobic motives.

In summary, the criminal justice system in Bulgaria considers the hate crimes only when they are based on the race, nationality, ethnicity, religious background and political conviction of the person. The law does not cover any SOGIESC hate crimes. However, the case law, in particular in the Sofia Court of Appeal’s decision in the case of the murder of the medical

¹³ Decision No. 330/12.07.2017 on the appellate CCGN No. 84/2016 of the SCA

¹⁴ Decision No. 330/12.07.2017 on the appellate CCGN No. 84/2016 of the SCA

student Mihail Stoyanov, indicates that the offense was committed for homophobic motives and acknowledges the increased degree of public danger of the defendants and their actions. Although it considers all this an aggravating circumstance, the Court finds its “hands tied” because a law on an offense with a more serious punishment or such an aggravated offense does not exist in the Criminal Code.

Hate speech

“Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such “hate speech” should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.”

Criminal Code of Bulgaria does not penalise “hate speech” against lesbian, gay, bisexual or transgender persons. Such protection is granted by the Anti-discrimination Law of Bulgaria but it has no criminal character but only general civil one which means that people using hate speech against the LGBTI community can only be fined for doing so.

Recommendations

1. Amendment to the Criminal Code of to include sexual orientation, gender identity, gender expression and sexual characteristics as grounds for incitement to hatred and violence.
2. Introducing in the Criminal Code of Bulgaria substantive hate crime offences and penalty-aggravating provisions on the basis of the SOGIESC.
3. Introduce mandatory trainings of judges, prosecutors, police officers and civil servants in order to inform them on discrimination, hate crimes and incitement to hatred and violence against LGBTI persons.
4. Develop a unique system for tracking hate crimes against LGBTI persons, which would represent a specific register to collect data on crimes which are motivated with hatred towards LGBTI persons.

2. Freedom of association

“Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.”

The LGBTI community in Bulgaria enjoys freedom of assembly. and association, and freedom of expression. Four active NGOs with focus on the LGBTI community exist in Sofia, whose activities are publicly visible: the Bilitis Resource Centre Foundation,¹⁵ GLAS Foundation,¹⁶ Youth LGBT Organisation Deystvie¹⁷ and Single Step.¹⁸ However, no public funding is available for LGBTI NGOs.

3. Freedom of expression and peaceful assembly

Member states should:

Guarantee freedom of expression and peaceful assembly to LGBT people, ensuring the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity

Encourage pluralism and non-discrimination in media

Protection of lawful assemblies

Condemnation by public authorities of any interference with the exercise of the right to freedom of expression and peaceful assembly by LGBT people

Freedom of expression and peaceful assembly is available in Bulgaria.¹⁹ In 2018 was the 11th edition of Sofia Pride.²⁰ It was organized by an informal organizing committee which consists of representatives of the LGBTI organizations Bilitis Resource Center Foundation, Youth

¹⁵ Bilitis Resource Center Foundation, website: <http://www.bilitis.org/>

¹⁶ GLAS Foundation, website: <http://glasfoundation.bg/>

¹⁷ Youth LGBT organization Deystvie, website: <https://deystvie.org/>

¹⁸ Single Step Foundation, website: <https://singlestep.bg/>

¹⁹ Check ILGA-Europe Rainbow Europe Map 2018, available at: <https://rainbow-europe.org/>

²⁰ Sofia Pride website: <https://sofiapride.org/>

Organization LGBT Deystvie, GLAS Foundation, the Bulgarian Helsinki Committee and the non-formal group Queer Squad. For the first time this year the program of supporting events lasted for a whole month and included Sofia Pride Arts, Sofia Pride Film Fest and Sofia Pride Sports. Although Sofia Pride is getting bigger and is gaining more and more supporters, there are more and more counter demonstrations. In Sofia Pride 2018 these counter demonstrations were 3 and aimed at preservation or revival of family values. One small incident occurred: During Sofia Pride two women from the March have passed through the counter demonstration of “National Resistance” and were attacked.

No public funding has been granted for Sofia Pride itself. In 2018 the mayor of Sofia Ms Jordanka Fundukova supported Sofia Pride Sports and Sofia Pride Arts events. However, there were no representatives of the City Council and the Mayor’s Office at the Pride March.

Recommendations

1. Public Funding for Sofia Pride march is recommended in order to show the citizens of Sofia the diversity of the capital city;
2. Public speaking on behalf of the Mayor of Sofia is recommended in order to show that the Municipality stands behind LGBTI rights and equality.

4. Right to respect for private and family life

“Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.”

Right to respect for private and family life of same-sex families

Bulgaria is one of few countries within the European Union which has no legal recognition of the same-sex families.²¹ Bulgarian legislation does not recognise any form the families of same-sex couples. Both the Constitution²² and the Family Code²³ define marriage as

²¹ Check ILGA-Europe Rainbow Europe Map 2018, available at: <https://rainbow-europe.org/>

²² Article 46, para. 1 of the Constitution.

voluntary union between a man and a woman. Bulgaria scores the lowest in the Eurobarometer research on same-sex marriage support, as only 17% of the people support the statement that same-sex marriages should be allowed in the EU (61% EU average).²⁴

Same-sex cohabiting partners are lacking different state and private benefits, tax breaks, inheritance rights, adoption rights, etc. These are rights which lack in the legal realm of unmarried different-sex couples as well because their relationship is not recognised by the State law either. This is a consequence of the lack of regulation of the legal institute of “civil union” which is non-existent in the country.²⁵ And while different-sex couples have access to marriage, same-sex couples have no way to have their relationship legally recognized and arrange their rights because the Constitution limits the marriage as such concluded between a man and a woman. In the new Family Code in 2009, civil unions were deliberately excluded from the legal act because the Commission Against Discrimination said in an official statement that if the law is passed and it excludes cohabiting same-sex couples, it will be discrimination. Once the statement was officially published and made public, the Council of Ministers decided that the society is not ready for same-sex relationships being recognized and the whole legal institute of the “civil union” was waived. Despite the numerous tries of the LGBTI organizations, no further developments are available. There are numerous cases pending before the Bulgarian courts and the European Court of Human Rights but so far none of them has been resolved.

In 2018 Youth LGBT organization Deystvie together with the Law Firm Popov, Arnaudov and Partners executed a legal research which reflects the state of the Bulgarian legislation in force. This study researches on how many rights are LGBTI people deprived of because of the lack of legislation recognizing their relationship. The study researches 70 legal acts and discovers over 300 rights that LGBTI people are deprived of because of the lack of legislation regulating their relationships.²⁶ Among these are the right to inherit your partner, visitation

²³ Article 5 of the Family Code of the Republic of Bulgaria.

²⁴ Eurobarometer 2018 research on Bulgaria, available at: <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/STANDARD/surveyKy/2180>

²⁵ Youth LGBT organization Deystvie, Research on the Rights of the same-sex couples, available at: http://deystvie.org/files/%D0%90%D0%BD%D0%B0%D0%BB%D0%B8%D0%B7%20%D0%BD%D0%B0%20%D0%BF%D0%BE%D1%81%D0%BB%D0%B5%D0%B4%D0%B8%D1%86%D0%B8%20%D0%BE%D1%82%20%D0%B1%D1%80%D0%B0%D0%BA%20%D0%B8%20%D1%81%D1%8A%D0%B6%D0%B8%D1%82%D0%B5%D0%BB%D1%81%D1%82%D0%B2%D0%BE_EN.pdf

²⁶ Accessible on the Internet at: http://deystvie.org/files/%D0%90%D0%BD%D0%B0%D0%BB%D0%B8%D0%B7%20%D0%BD%D0%B0%20%D0%BF%D0%BE%D1%81%D0%BB%D0%B5%D0%B4%D0%B8%D1%86%D0%B8%20%D0%BE%D1%82%20%D0%B1%D1%80%D0%B0%D0%BA%20%D0%B8%20%D1%81%D1%8A%D0%B6%D0%B8%D1%82%D0%B5%D0%BB%D1%81%D1%82%D0%B2%D0%BE_EN.pdf

rights in hospitals, right to adopt, right to donate tissues, organs, etc. to your partner as only married couples can donate, right to be granted protection under the Law on Domestic Violence because it does not cover same-sex cohabiting couples.

Adoption

Under the Bulgarian Family Code, only single persons (women or men), as well as married couples, may adopt children.²⁷ Two persons who have not concluded marriage may not adopt the same child. Thus, only one of the partners in a same-sex couple can adopt a child. This creates a contradiction between the theory and the practice because according to the law only one of the parents is appointed as a parent, but in practice they both are *de facto* parents of this same child as they both contribute to the child's care and have an emotional link to it. Nevertheless, the second parent has no rights over the child, and, conversely, the child has no inheritance rights over its second parent. The situation is the same if one of the two persons is the biological parent of the child – the other person may not adopt the biological child of his/her partner of the same sex neither has any rights over this child. These adoption procedures are available for same-sex couples.²⁸

The artificial fertilisation procedure (in vitro) is accessible both to married couples, and to single women. More about the rights of same-sex couple in artificial fertilisation procedures see below at Case of Lily and Dari.

Case Law

Case of Lilly and Dari

In general, under the Private International Law Code of Bulgaria the marriage concluded under the laws of a foreign state between same-sex persons should be recognised by the Republic of Bulgaria.²⁹ However, in 2017 a Bulgarian female couple who had got married

https://www.mlsp.government.bg/ckfinder/userfiles/files/admob/Family_Code.pdf

²⁷ Family Code of Bulgaria, available at: https://www.mlsp.government.bg/ckfinder/userfiles/files/admob/Family_Code.pdf

²⁸ Case law, Jordanka Bekirska - attorney-at-law, Refusal of the Court on second parent adoption procedure.

²⁹ Articles 75, 76 and 77 of the Private International Law Code

in the UK received a refusal to reflect their marriage as current marital status in the personal registration card of each of the two women.³⁰ The motive for the Municipality's refusal was the same gender of the two persons. Under the Bulgarian law only municipal offices keep data on marriages concluded abroad and only they certify that circumstance by issuing the respective document or certificate to citizens and institutions. Thus the consequences of the non-registration are that each of the two women is deprived of inheritance rights, tax benefits, matrimonial shared property, right to child adoption by the two women jointly, as well as the right of one of the women to adopt a biological child of the other. The two women filed a complaint against the decision of Sofia City Municipality, Lozenets district. The decision of Sofia Municipality was confirmed by the first instance court – Administrative Court of the City of Sofia. Now the case is pending before the Supreme Administrative Court in Bulgaria. The two women are represented on the case by attorney Denitsa Lyubenova from the Youth LGBT Organisation Deystvie, as well as of a team of lawyers including Bulgarian Helsinki Committee and Sofia University professors.

Case of Lilly and Dari on Assisted Reproduction

At the end of 2017, the same couple received a refusal from the Centre for Assisted Reproduction for financing an in-vitro procedure, because in the application form the women applying for the procedure mentioned that she was married and mentioned the names of her wife. The Centre argues that the reason for the refusal is that two women cannot create an progeny together in a natural way. In same circumstances that argument evokes dismay in view of the circumstance that heterosexual couples seeking financing for the in vitro fertilisation procedure do that because they are unable to create progeny in a natural way. The refusal by the Centre, obviously prompted by heterosexist motives, was appealed before the ACSC with the legal aid provided by attorney Denitsa Lyubenova from the Youth LGBT Organisation Deystvie, but there has been no judgement by the Court

³⁰ Information about the Court decision available at: <https://deystvie.org/news-bg/%d0%bc%d0%bb%d0%b0%d0%b4%d0%b5%d0%b6%d0%ba%d0%b0-%d0%bb%d0%b3%d0%b1%d1%82-%d0%be%d1%80%d0%b3%d0%b0%d0%bd%d0%b8%d0%b7%d0%b0%d1%86%d0%b8%d1%8f-%d0%b4%d0%b5%d0%b9%d1%81%d1%82%d0%b2%d0%b8%d0%b5-%d0%bf/>

within the frameworks of the reported period.

Case of Janet Lund Larsen

Janet Lund Larsen – a Danish citizen was married to a Bulgarian woman. They both lived in Denmark. In 2016 the Bulgarian citizen gave birth to a child. The child was by birth a Danish citizen and as such was issued a Danish birth certificate in which Janet and her Bulgarian partner were mentioned as parents. According to the Danish law they both had rights over the new born child. At the end of 2016 the two women divorced in Denmark. They both continued to look after the child. Meanwhile, the Bulgarian mother started a procedure in Bulgaria for requesting Bulgarian citizenship by origin of the mother (according to the Bulgarian Family Code) for the child. She requested the Municipality of Pazardzhik to issue a new birth certificate based on the original one issued by the Danish authorities, i.e. to issue a Bulgarian birth certificate in which the two mothers are mentioned. The request was filed with all the requested documents. The Municipality rejected her request because the Danish birth certificate was not in accordance with the Bulgarian law. This was because in the Danish birth certificate it was written that the child had two mothers and according to the Bulgarian law the origin of the child can only be of a mother and a father but not of two mothers. According to article 12, para. 1 of the Protocol № ПД02209/ 21.05.2012 г. for the functioning of the system for civil registration when registering birth certificates, certificates for marriage or death, all the data in the Bulgarian certificate should entirely correspond to the data in the original certificate. Respectively, the rejection of the Municipality was complained against and a court case in the Administrative Court of Pazardzhik was formed. In the current case, the Administrative Court of Pazardzhik ruled that Pazardzhik Municipality should issue a Bulgarian birth certificate in which the origin of the “father”, meaning the place of the father in the birth certificate, should be left blank and suggests that if the Danish mother wishes to be written in the birth certificate of the child she should submit a separate court case for proving an origin of the “father”. Therefore, a new Bulgarian birth certificate was issued according to which the only parent of the child was the Bulgarian mother. This certificate although requested by

the Administrative Court of Pazardzhik was in full contradiction of the Private International Law as well as the European Convention for Human Rights. On the basis of this new birth certificate the Bulgarian mother issued a Bulgarian international passport of the child and left Denmark with the child without the permission and knowledge of the Danish mother. She never again returned the child in Denmark and never allowed the Danish mother to see the child anymore. In all these cases the Danish mother was not represented by a lawyer.

In 2018 Youth LGBT organization Deystvie and its attorney Denitsa Lyubenova offered free legal aid to Janet Lund Larsen in her request to return her son to Denmark. The court case was formed under the Hague Convention on the Civil Aspects of International Child Abduction. This was a two instance court procedure and the courts ruled against the returning of the child in Denmark. The first instance Court – Sofia District Court ruled that even though the submitted request for returning the child in Denmark complied with all the requirements of the Hague Convention on the Civil Aspects of International Child Abduction, it rejected the request of the Danish mother solely basing its rejection on Article 20 of the Hague Convention on the Civil Aspects of International Child Abduction stating that “the returning of the child will contradict basic human rights principles of the State of Bulgaria”. Further in its judgements the Court specifies these principles as “common care over the child by child’s mother and father” and adds that the Bulgarian law and legal system does not recognize the institutes of “common motherhood” and “common fatherhood” and therefore returning the child to Denmark and granting the Danish mother with parenthood rights will contradict the main principles of the Bulgarian law as well as the “Bulgarian public order”. The decision of the first instance court was confirmed by the last instance court and it entered into force in 29 May 2018 with which the Danish mother was not only deprived of her rights as a parent but she was not even granted visitor’s rights.

Case of Mariama and Cristina

Mariama (a French citizen) and Cristina (an Australian citizen) were married in France for 2 years. In 2016 they both decided to come and live in Bulgaria. In 2016 Mariama was

granted a residency permit on the basis of her EU citizenship. Cristina requested the Migration in Sofia to be granted a residency permit as a “wife” of an EU citizen. At the end of 2016 Cristina was granted such permit for one year. Meanwhile, they bought a house in a village in Bulgaria. At the end of 2017 when Cristina needed to submit a request to prolong her residency permit she submitted the same documents as the ones she submitted in 2016. Nevertheless, in December 2017 Cristina was rejected the permit and the Migration Department of the Ministry of Interior based its rejection on the Constitution, Family Code and the Bulgarian public order stating that allowing the non EU same-sex partner to reside in Bulgaria would contradict Article 46 of the Constitution and Article 5 of the Family Code of Bulgaria both defining marriage as a one concluded between a man and a woman.

With the free legal aid of Youth LGBT organization Deystvie and its lawyer Denitsa Lyubenova, Cristina submitted a complaint against the decision of the Migration Department. The Decision of the court was issued on 29 June 2018 and was entirely based on the decision of the European Court of Justice and the implementation of the Free Movement Directive.³¹ Sofia administrative court overturned the Interior Ministry's Migration Directorate ban, saying that upholding it would "hinder the right of the EU partner to move and reside freely in the territory of the EU." The ruling was also in line with a decision of the EU's top court of justice in Luxembourg on June 5, stating that EU laws on freedom of movement oblige all member states to allow residency of the non-European spouses of EU citizens, including same-sex partners, even if they did not recognize same-sex marriage. This is the first ever court case in Bulgaria where the Court recognizes a same-sex marriage.

Case of S.D. on the Domestic Violence Act

The Protection Against Domestic Violence Act (2005) regulates the rights of the victims of domestic violence. This law protects persons who are or have been married or cohabiting. As regulations on cohabiting partners are missing in Bulgaria, in theory this law should also grant protection to cohabiting same-sex couples. Nevertheless, in recent court case litigated by Denitsa Lyubenova from Youth LGBT organization Deystvie, the court held that the he

³¹ Information about the court case available at: <https://www.novinite.com/articles/190902/Bulgarian+Court+has+Recognized+the+Rights+of+a+Same-sex+Couple>

plaintiff is not among the persons allowed to seek protection against domestic violence because the law of the State can only grant protection to persons from different sex who were cohabiting together as the Constitution and the Family Code recognizes the marriage as such between a man and a woman. The case is pending before the European Court of Human Rights.

Right to respect for private and family life of trans and intersex people

Bulgarian legislation recognises the right of a person to change his/her gender marker.³² However, the law lacks a statutory procedure for such a change. The whole procedure starts with a request by the person to the regional court where the person lives. Each court case regarding change of the gender marker is given to be looked at to different judges and there is no single court or judge which specializes on the topic. For this reason there exists controversial case law³³, which not only produces different judgements, but also sets different requirements on what documents should be submitted to the court when initiating the case, as well as the scope of the judgement and this creates unequal opportunities for transgender citizens wishing to undergo the procedure.³⁴ According to the Bulgarian Helsinki Committee this leads to frequent refusals by the courts in Bulgaria to allow change in the gender marker which is a breach of the right to personal life of transgender and intersex people in Bulgaria.³⁵

According to the same report in 2017, Sofia City Court gave two completely controversial judgements concerning the recognition of the gender of trans persons. In the first judgment SCC ruled that transpersons cannot be obliged to undergo surgery. The reasoning of the Court states that such a prerequisite would mean that the law is deliberately forcing a human being to undergo a surgery which means that the law uses the institute of “blackmailing” and secondly, that the admissibility of such a surgery which might be accepted as a criminal act under Article 128 of the Criminal Code, i.e. grievous bodily injury. At the same time, in another judgment the SCC ruled that the persons who asked the

³² Law on Bulgarian Identity Documents, Article 9, para. 1; Regulations for Issuing of Bulgarian Identity Documents, Article 20, para. 6 and Article 22, para. 6.

³³ Judgement № 330 of July 12th, 2017 on appellate criminal case № 84/2016, 5th Panel.

³⁴ See the Resource Centre Bilitis Foundation (2012), *Sex change of trans- and intersex people in Bulgaria: Study of the legal framework and case law and strategy for their improvement*. Accessible on the Internet at: http://www.bilitis.org/db/images/Gender%20Reassignment%20in%20Bulgaria_BG.pdf; and Dobрева, N. (2015), *Gender change through civil law procedure – case law and tendencies in 2014* Accessible on the Internet at: http://www.bilitis.org/db/images/2014_LGR_Practices_BULGARIAN.pdf

³⁵ Bulgarian Helsinki Committee, Human Rights in Bulgaria in 2017, annual report. Accessible on the Internet at: http://www.bghelsinki.org/media/uploads/annual_reports/annual_bhc_report_2017_issn-2367-6930_en.pdf

court to change their gender marker need to prove before the court their serious and irrevocable decision for a future change in their corporeal sex in accordance with their mental one.

The court in its judgement sets a specific requirement - start of hormonal therapy which already leads to irreversible changes. This latter judgement was confirmed by the Bulgarian Supreme Court and is in conflict with the position of the World Professional Association for Transgender Health (WPATH), which indicates that medical and other barriers before the recognition of the gender of transgender persons may damage their physical or mental health.

Recommendations

Adopt laws for recognition of same-sex families.

1. Adopt laws to ensure that lesbian couples have access to free reproductive treatment equal to straight couples and single women.
2. Pass and implement law on statutory procedure for legal gender recognition that is quick, transparent and accessible and based on self-determination.
3. Abolish provisions which condition legal gender recognition with invasive requirements, such as a mandatory psychiatric diagnosis, sterilisation, medical examinations, or hormonal treatment.
4. Pass and implement laws in all administrative units which would establish obligation of health insurance institutes to cover the costs of medical procedures of gender affirming procedures and define duties of medical institutions to form teams of trained professionals who could perform these procedures.
5. Engage medical institutions in cooperation and sharing relevant information with civil society, thus raising the awareness regarding intersex persons and removing outdated terms such as *hermaphrodite* and *pseudo hermaphrodite*.
6. Making information about intersex new-borns accessible
7. Prohibit medically unnecessary “sex normalising” surgeries on intersex children.

5. Employment

“Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or

gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.

Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.”

There is a lack of reliable information and governmental research or monitoring mechanisms in relation to the situation of LGBT persons in Bulgaria, including employment.

Most of the existing research data about discrimination of LGBTI people issues come from international sources and are funded internationally. The most recent of them, “Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity”³⁶ was published in 2010 and was funded by the European Union Agency for Fundamental Rights.

The only relevant research in Bulgaria have been provided by NGOs or occasional surveys by the Commission for Protection against Discrimination ³⁷ or rarely by media.

In general, there is a lack of specific legal provisions that guarantee the same treatment of LGBTI persons in employment, in the private and public sector. The Protection Against Discrimination Act (PADA³⁸) is a single equality act transposing all EU equality directives, including the Employment Equality Directive (2000/78/EC). It bans discrimination uniformly on any ground, explicitly including sexual orientation in employment but does not explicitly mention gender identity, gender expression and sex characteristics. However, the Bulgarian

³⁶ Slavka Kukova, 2010, Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity, European Union Agency for Fundamental Rights

³⁷ Sociological research of the Bulgarian Commission for protection against discrimination, performed by SCALA agency in September 2007

³⁸ Bulgaria/ Закон за защита от дискриминация (ЗЗД) [Protection Against Discrimination Act (PADA)], (01.01.2004).

Labor Code³⁹ does not guarantee non-discrimination with respect to sexual orientation, gender identity, gender expression and sexual characteristics.

Although the Employment Equality Directive (2000/78/EC) is transposed by Bulgaria and guarantees equality in employment to every person regardless of their sexual orientation and/or gender identity, there is no proof in the practice of the courts that it has been directly used as a legislation on the basis of which the court rules. Therefore, despite direct or indirect discrimination based on sexual orientation and gender identity in employment is forbidden across the EU, in Bulgaria LGBTI persons are still being stigmatized and their sexual orientation, gender identity, gender expression and sexual characteristics are still negatively impacting economic and social aspects of their life. There is no specific research undergone in Bulgaria on discrimination on the workplace, however, through the platforms of the LGBTI organizations such information was received often.

Recommendations

1. Include gender identity, gender expression and sexual characteristics as grounds for prohibition of discrimination in the Anti-discrimination law;
2. Amend the Labour Code to assure compliance with the Employment Equality Directive (2000/78/EC);
3. Carry out further research in the field of labor discrimination concerning LGBTI in Bulgaria;
4. An analysis of existing jurisprudence and implementation of existing legal provisions of equal treatment in employment and occupation;
5. Mandatory trainings for Bulgarian authorities, representatives of unions and associations of employers in order to raise awareness about problems LGBTI persons face in this field.

6. Education

“Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on

³⁹ Bulgarian Labor Code available at <https://lex.bg/bg/laws/ldoc/1594373121>

grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

Taking into due account the overriding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.”

Discrimination in education remains difficult to identify or address due to the general invisibility of LGBTI persons and lack of reliable information and research in the field. As of 2018, there are only two studies on discrimination in education. The first survey about homophobia and transphobia in the educational system was implemented by a Bulgarian Gay Organization “Gemini” in 2007-2008, funded by a small grant of the Dutch Ministry of Foreign Affairs⁴⁰. According to the data, the Bulgarian educational curriculum is heavily based on gender stereotypes, imposing strong heteronormative and sexist roles of men and women. The research also shows that 70% of the responding LGBTI students dropout of school or miss classes because of systematic harassment and 50% of them attempt suicide after such bullying in school. Despite the requests and activist work of the LGBTI organizations in Bulgaria in the last ten years, there is no evidence for follow-up or preventive measures taken by the Ministry of Education and Science, nor any other governmental agencies to tackle these issues.

In 2015, Bilitis Resource Center researched all publicly accessible secondary schools in Sofia to find out to what extent they ensure effective means for protection and inclusion of LGBTI students and teachers⁴¹. The analysis of the research findings indicates that homophobia,

⁴⁰ <http://www.bgogemini.org/bg/school/resultati.html>

⁴¹ Resource Center Bilitis, 2015, Schools for All?The Status of LGBTI Students and Teachers in Bulgarian Schools

biphobia, and transphobia are normalized and reproduced in the school environment due to the absence of adequate measures of prevention or intervention when they occur. Also, few schools create safe space for discussion on issues related to sexuality and gender expression, which reinforces negative stereotyping of homosexual, bisexual, intersex and transgender students, leading to discrimination and violence.

Despite the provisions in the Protection against Discrimination Act to prohibit discrimination based on sexual orientation in all domains of life, including education ⁴², most schools in Bulgaria do not have internal policies, which explicitly recognize discrimination and bullying based on sexual orientation, gender identity, gender expression and sexual characteristics⁴³.

Recommendations

1. Government agencies and Ministry of Education and Science must develop institutional measures to address and eliminate homophobic and transphobic bullying, violence and discrimination against LGBT students and teachers.
2. Development of nationwide teacher training programmes in order to raise awareness, to increase visibility, and to promote LGBTI tolerance and create an inclusive educational system.
3. Nationwide adoption of LGBTI-inclusive school curriculum, textbooks and resources that include positive representations of lesbian, gay, bisexual and trans (LGBT) people, history, and related events. This should include teaching about lesbian, gay, bi and trans (LGBT) people and themes. Students need to be taught about the accomplishments of LGBT men, women and gender nonconforming people of the past and present, as well as the historical oppression that the LGBT community has faced for decades
4. Schools must develop internal plans and measures to ensure that the education methods, curricula and resources that are used respect diverse sexual orientations and gender identities, including the particular needs of students, their parents and family members related to these grounds

⁴²]Bulgaria/ Закон за защита от дискриминация (ЗЗД) [Protection Against Discrimination Act (PADA)], (01.01.2004).

⁴³ GALE European report 2017

5. Introduce LGBTI inclusive modules in curricula and programmes in law schools and police academies, in the permanent and specialist programmes of police officers trainings, and civil service exams.
6. Trainings of teachers and university professors to sensitize them in working with LGBTI persons, to teach them what is hate speech against LGBTI people and how to avoid it.
7. Education institutions and schools should work with, psychologists/pedagogues and relevant specialist on providing adequate protection and psychological aid to victims and rehabilitation of perpetrators
8. Development of institutional measures for explicit protection of trans students in all educational institution. Trans students should be treated consistent with their gender identity in all aspects of planning, implementation, as well as in the operation and evaluation of single-sex classes

7. Health

“Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.”

There are no reliable and official statistics and data, investigating the health and sexuality issues specifically relevant to LGBTI persons or people living with HIV in Bulgaria.

According to findings from a report by the EU Agency for Fundamental Rights (FRA) in 2016 the perception of homosexuality as a disease is still shared by many healthcare professionals in Bulgaria, although homosexuality is not classified as mental illness according to the Medical Classification of Diseases, which is translated into National Classification⁴⁴. This is largely due to the fact that medical professionals and professional groups in Bulgaria, have very low levels of awareness and knowledge about the needs and problems of LGBTI people. Furthermore, universities and high schools do not provide any

⁴⁴ European Agency for Fundamental Rights in Europe, 2017, **Professionally speaking: challenges to achieving equality for LGBT people** available at <http://fra.europa.eu/en/publication/2016/professional-views-lgbt-equality>

sex education or LGBTI related education. There is also a lack of specialists who could consult LGBT persons and provide psychological support or information on safe sex practices.

As of 2018, Assisted Reproductive Technology is legally only available for different-sex couples with certified fertilisation problems (explicitly addressed in “Right to Respect for Private and Family Life”).

According to European research from 2017 on health inequalities faced by LGBTI people⁴⁵, societal stigmas, shame and national politics in Bulgaria are felt as a barrier to healthcare by LGBTI people. Throughout the focus groups and interviews LGBTI people identified and discussed numerous examples of healthcare inequalities resulting from discriminatory and stigmatising treatment by healthcare staff in Bulgaria. The research also suggests that the stigma around sexual orientation and gender identity, gender expression and sex characteristics leads to refusal of health care services or to people not discussing crucial health issues with their healthcare practitioners, and/or not being able to access health services in Bulgaria.

A major area of concern for the LGBTI community is a refusal of health services, particularly to transgender persons and persons living with HIV. In 2017 LGBT Youth Organization Deistvie has reported 10 cases of doctors refusing to provide service to LGBTI persons. Five of the cases involved a refusal of health service to trans people including refusal for top surgery, refusal for annual doctor’s visitation, as well as bad performance on top surgery which led to many complications.⁴⁶ Three of the cases concerned a person living with HIV. The first person was denied switching to antiretroviral therapy, and the rest were related to refusal to measure viral load. In 2017 there was a substantive lack on kits for measuring viral load in Bulgaria. This continued for 6 months and led to inefficient antiretroviral therapy as the viral load is the most important when starting the therapy.⁴⁷

Denial of health service for people living with HIV

From November 2016 to July 2017, National Reference Confirmatory Laboratory of HIV in Bulgaria did not have any tests for measuring the viral load in the body, which were the

⁴⁵ ILGA Europe, EuroHealthNet (2017) Health4LGBTI: Reducing health inequalities experienced by LGBTI people

⁴⁶ Youth LGBT organization Deystvie, Hate crimes and incidents in Bulgaria in 2017, D. Lyubenova, available online at: <http://deystvie.org/files/Report%20eng%20-%20online%20.pdf>

⁴⁷ Youth LGBT organization Deystvie, Hate crimes and incidents in Bulgaria in 2017, D. Lyubenova, available online at: <http://deystvie.org/files/Report%20eng%20-%20online%20.pdf>

primary means of monitoring of patients living with HIV and establishing and confirming a lasting viral suppression of people undergoing antiretroviral therapy.⁴⁸ As a result, the possibility of determining the amount of virus in newly discovered patients was obstructed. This forced doctors in the ward to prescribe antiretroviral therapy without being aware of the initial indicators of the viral load of the patient's body. In addition, monitoring of patients taking antiretroviral therapy was disrupted, and for those who were only starting the medications due to the lack of a test, the determination of a persistent viral suppression (undetectable viral load in the body), which was a key indicator of the effectiveness of therapy, became impossible. For patients who had an already established persistent viral suppression, tracking and validating previously achieved undetectable levels of viral load in the body became impossible. These practices were in absolute contravention to the Methodological Guideline for antiretroviral treatment and monitoring of HIV-positive individuals, thus compromising the health status of the patients

The main reason for the lack of tests for determining the viral load was the delay in the adoption of the National HIV and AIDS Prevention and Control Program, on which the purchase of these diagnostic kits depended.⁴⁹ Achieving sustained viral suppression was the main sign of successful antiretroviral therapy according to the Methodological Guideline for antiretroviral treatment and monitoring of adults with HIV infection, approved by Order No. ПД-01-193/03.06.2016, as well as according to the global medical practice..

Denial of services to trans persons

Five of the cases of denial of service were based on the gender identity of the person. In all these cases, the person who was affected did not report the incident. Reporting was done by a witness, a friend or a relative to the person. In two of the cases there was a denial of a health service, in one case there was a refusal to carry out an operation following a change of the gender marker and the names by court order, while in the other there was an operation but there was a poor performance thereof. In another case, a trans man was denied conclusion of a life insurance, for the sole reason that he was trans.⁵⁰

⁴⁸ Youth LGBT organization Deystvie, Hate crimes and incidents in Bulgaria in 2017, D. Lyubenova, available online at: <http://deystvie.org/files/Report%20eng%20-%20online%20.pdf>

⁴⁹ Youth LGBT organization Deystvie, Hate crimes and incidents in Bulgaria in 2017, D. Lyubenova, available online at: <http://deystvie.org/files/Report%20eng%20-%20online%20.pdf>

⁵⁰ Youth LGBT organization Deystvie, Hate crimes and incidents in Bulgaria in 2017, D. Lyubenova, available online at: <http://deystvie.org/files/Report%20eng%20-%20online%20.pdf>

The Bulgarian law does not prohibit hormonal treatment and surgery with the aim of sex reassignment.⁵¹ However, the law lacks a statutory procedure for such a change, which results in controversial judgements by the court, as well as in different requirements on what documents should be submitted to the court when initiating the case.

In order for a transgender people to have their gender markers changed in their identity documents, the court requires from them to first prove their serious and irrevocable decision for a future change in their corporeal sex in accordance with their mental one, through hormonal therapy which already had let to irreversible changes. In case hormonal therapy is prescribed by a doctor, they might be subject to criminal offence under Article 128 of the Criminal Code, i.e. grievous bodily injury. As a result, due to fear of criminal proceedings, doctors refuse to assign transgender people to hormonal therapy. Thus, very often transgender people find themselves in a catch-22 situation, affirmed both by the court and the doctors. Furthermore, the lack of gender reassignment procedure could lead to life threatening non prescribed hormone use, without medical supervision or/and medical malpractice which would never be officially revealed.

The surgery relating to a change of sex is covered under the national health insurance system. Hormone treatment, on the other hand, is not covered, as such treatment is only provided for “illnesses”. The costs must be borne by the trans or intersex person concerned.

Intersex children in Bulgaria are often subjects to surgeries for normalizing surgeries, that are medically unnecessary and not based on the child’s consent.

Recommendations

1. Ministry of Health and relevant authorities should draw up and adopt an action plan to: raise awareness of LGBT specific health issues among policy-makers, the public and the LGBT community; to promote the health and wellbeing of LGBTI people and highlight the link between mental health, sexual health and issues of substance misuse; to ensure psychological support and consultations to LGBTI patients, including minors and people living with HIV, when needed.
2. Access to mental health services for LGBTI people should be improved, particularly for trans, intersex people, and people living with HIV. This requires nationwide

⁵¹ Law on Bulgarian Identity Documents, Article 9, para. 1; Regulations for Issuing of Bulgarian Identity Documents, Article 20, para. 6 and Article 22, para. 6.

professional trainings of health professionals to raise awareness of LGBTI people's health needs and specific problems and to promote cultural competence in healthcare settings

3. Medical literature should be updated particularly on trans and intersex health and healthcare workers need to be educated about sexual orientation, gender identities and sex characteristics in order to avoid misdiagnosis, inadequate treatment, refusal of health services or using offensive terms (i.e. saying homosexuality is a disease, etc.).
4. In view of the fact that hormone therapy is an essential part of gender reassignment, the authorities should provide financial assistance to those in need of such treatment.
5. Research is needed to determine the general health profile of trans and intersex people. LGB people should be also actively included in research about their health needs.
6. Professional training and sensitization of health care workers to ensure respect to patient's privacy and confidentiality, such as providing safe space where a patient will be able to have private consultation with a doctor.
7. Authorities to develop legislation, supportive policies and policy enforcement on gender recognition and gender reassignment ensuring that it is in line with international legal and health standards and expertise, which would ensure that trans adults can access medically necessary transition-related care and needed interventions

8. Housing

“Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.”

“Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.”

The Anti-discrimination law of Bulgaria prohibits discrimination based on sexual orientation in any sphere of life.⁵² However, no specific spheres, such as housing are mentioned in any legal act. Gender identity, gender expression and sex characteristics are not included as grounds. The legal act which deals with housing and rental rights is the Law of Obligations and Contracts in Bulgaria⁵³ which has no provisions on discrimination. At the end of 2017 there was a case which became public of a young underage gay boy who was constantly violently abused by his father in a small Bulgarian city. The violence against the child became grave and with the help of the few individuals and the Centre for Sexual Health the boy was taken out of his home and set to live in an institution from a secured type where his biological family could not approach him. Although this case ended positively for the child, there are no functioning programmes for prevention of homelessness, nor are there any shelters or other adequate emergency accommodation for LGBTI persons. LGBTI persons can be placed in safe houses on a general principle but their specific needs because of being gay, trans or intersex will not be met because these safe houses are not specifically created to serve LGBTI people's needs. This problem is ought to be properly addressed by state because it could lead to homelessness especially among young LGBTI persons.

Recommendations

1. Ensure that discrimination in housing is prohibited in the Law of Obligations and Contracts in Bulgaria on the grounds of SOGIESC.
2. Ensure safe houses and shelters for LGBTI people and youth are available.
3. Trainings for social workers to recognize and meet the needs of LGBTI youth, especially of those who are victim of violence.

9. Sports

“Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.

Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to

⁵² Anti-discrimination act of Bulgaria, available at: <https://www.legislationline.org/topics/country/39/topic/84>

⁵³ Bulgarian Obligations and Contracts Act, available at: <http://www.bulgaria-law-of-obligations.bg/law.html>

prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.

Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.”

There is a lack of research on LGBT issues in sport. There is a gay sports club but no out known gay athletes.

Recommendations

1. Adopt and implement rules of conduct in sports which would prohibit discrimination based on sexual orientation and gender identity.
2. Ministry of Education and Sports to adopt action plan on raising awareness among sports and physical education specialists by organising trainings about LGBTI related issues.

10. Right to seek asylum

“In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.”

“Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.”

“Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.”

There are no available statistics or data on asylum or refugees seekers based on their sexual orientation or gender identity. Since 2015 Bulgaria complies with the requirements of Article 10 of Council Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (the ‘Qualification Directive’), according to which, persecution of a group based on the common characteristic of sexual orientation might be considered persecution ‘for reasons of membership of a particular social group’ for the purpose of obtaining refugee status⁵⁴. According to Bulgarian legislation, it is unclear whether transgender persons could be recognised as belonging to a ‘social group’ and, if so, which.⁵⁵

Data regarding the number and outcome of cases is not conclusive, however there has been very few official cases of an asylum seekers basing their application on the grounds of persecution on a common characteristic of sexual orientation. These cases were litigated by attorney-at-law Denitsa Lyubenova and Youth LGBT Organization Deystvie and the persons and all 3 of them received international protection. Nevertheless, in some of the cases where application is filed on this ground the State Agency for Refugees refuses to grant international protection status. According to Art.1, para. 3 of the Law on Asylum and Refugees ‘members of the family’ are: a) the spouse or the person with whom s/he is in a proven stable and long-term relationship; and b) children under 21 years of age who are not married. Thus, the law does not recognise LGBT partners as family members for the purpose of obtaining derivative status – refugee status or a subsidiary form of protection, i.e. “humanitarian status” in Bulgarian law.

Although asylum is granted to LGBTI people basing their application on the grounds of persecution on a common characteristic of sexual orientation, yet there is no safety housing in the camps. In 2017 Youth LGBT organization received information for numerous rapes against gay men in a camp in Bulgaria, however, no further information could be gathered as the asylum seeker left the country.

⁵⁴ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted

⁵⁵ S. Kukova (2008) Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Bulgaria. FRALEX.

Recommendations

Provide adequate general and specific training to all relevant categories of the asylum authorities' personnel, including interviewers and applicant reviewers in the State Agency for Refugees.

Remove all the countries which criminalize same-sex activities from the list of the "List of Safe Countries of Origin".

Carry out statistics on the approvals of international protection on the basis of which it is awarded, including sexual orientation and gender identity, accessible upon the request to the organizations working with refugees and asylum seekers.

11. National Human Rights Structures

"Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings."

Ombudsman

The Ombudsman is the body protecting the rights of all citizens, including the rights of children, persons with disabilities, minorities, foreigners etc. The Ombudsman enjoys a broad scope of powers concerning all citizens' rights – political, economic, civil, social, and cultural.

Commission Against Discrimination

Commission for Protection against Discrimination (CPD) is the national equality body of Bulgaria. It was created in April 2005 under the Law for Protection against Discrimination with a main objective "to prevent discrimination, to protect against discrimination and to

ensure equal opportunities”. The Commission functions in compliance with the Paris Principles and issues legally binding decisions. It can impose fines and compulsory administrative measures.

The CPD is accredited as a National human rights institution with status "B" by the Human Rights Council of the United Nations.

The Commission also acts as a national contact point on hate crimes with the Organization for Security and Cooperation in Europe. In this capacity, the Commission annually collects data on hate crimes as instructed by the Office for Democratic Institutions and Human Rights (ODIHR).

12. Discrimination on multiple grounds

“Member states are encouraged to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity; national human rights structures should have a broad mandate to enable them to tackle such issues”.

Bulgaria has not implemented measures for insuring non-discrimination on multiple grounds. The general Anti-discrimination law applies and no differentiation in the fines and penalties exists.

So far, there is no further research on cases of discrimination on multiple grounds.

Recommendations

1. Ensuring the existence of legislation protecting from discrimination on multiple grounds and ensuring additional penalties and fines are applied.

